THE HON'BLE SRI JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE SRI JUSTICE S. ANANDA REDDY

Date: 19—09—2005

W.P. No. 10835 of 1997

Between:

Veerabhadra Picture Palace, Parvathipuram

Rep. by its Proprietor Smt. P. Bharathi …Petitioner.

a n d

The Commissioner, Commercial Taxes,

Andhra Pradesh, Hyderabad and others.

…Respondents.

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O R D E R: (per Sri B. Sudershan Reddy, J)

The petitioner is a theatre, exhibiting films. That at the relevant time altogether 13 employees were working in the said theatre. The employees went on strike from 12.7.1991 to 1.1.1992 for whatever reason, with which we are not concerned in the present writ petition. The industrial dispute between the petitioner theatre and the workmen was referred for adjudication to the Additional Industrial Tribunal-cum-Labour Court, Visakhapatnam by the Government vide G.O.Rt.No. 1989 W.D.C.W. & L(Lab.I) Department dated 5.10.1991, and by G.O.Rt.No.2023 dated 9.10.1991, continuance of strike by the workmen was prohibited. The strike was accordingly called off by the workmen on 1.1.1992.

The case of the petitioner is that the management was not in a position to screen the cinema shows as it was closed from 12.7.1991 to 1.1.1992 due to the strike by the workers and, therefore, not liable to pay any entertainment tax under the provisions of the A.P. Entertainment Tax Act 1939 (for short, 'the Act'). Reliance is placed upon G.O.Ms.No.752 dated 4.7.1985 whereunder the Government authorized the Commissioner, Commercial Taxes to grant exemption to cinema theatres from payment of entertainment tax under the provisions of the said Act, if it is satisfactorily established that the exhibitor could not conduct the shows under the circumstances enunciated therein, such as, 1) Natural calamities, 2) Break in law and order, 3) National calamities, 4) Social customs and 5) Cancellation of licence.

The Government simultaneously issued G.O.Ms.No.122 Revenue (CT.III) Department dated 18.2.1988 delegating the powers to the local Mandal Revenue Officers for issuing certificates relating to cinema halls closed due to various reasons enumerated in G.O.Ms.No.752 dated 4.7.1985.

According to the petitioner, the Mandal Revenue Officer

vide proceedings dated 24.3.1992 certified that the management of the petitioner theatre has not screened any cinema shows and the theatre was closed from 12.7.1991 to 1.1.1992 due to strike by the workers.

The petitioner made an application to the Entertainment Tax Officer in the prescribed proforma for the purpose of claiming exemption under Section 19-A of the Act, along with the certificate issued by the Mandal Revenue Officer.

While the matter stood thus, the 3rd respondent issued demand notice requiring the petitioner to pay the entertainment tax of Rs.1,59,732/- for the period 1991-92 within seven days. The petitioner promptly questioned the same in W.P. No. 28400 of 1996 on the file of this Court and this Court disposed of the said writ petition on 21.1.1997 directing the petitioner theatre to file a petition before the 3rd respondent for supply of copy of the order passed by the 1st respondent – Commissioner of Commercial taxes within one week from the date of that order and directing the 3rd respondent to supply a copy of the order and thereafter the petitioner to approach the appellate authority. The petitioner made an application to 3rd respondent for issuance of the copy of the order passed by the 1st respondent dated 29.10.1996. According to the petitioner, instead of supplying copy of the order, another demand notice was issued. Aggrieved by the same, the petitioner filed W.P. 6059 of 1997, which was disposed of by this Court with a direction that the copy received by the learned counsel for the appellant shall be treated as certified copy of the order and the appellant shall prefer an appeal within two weeks from that date. This order was passed on 15.4.1997.

The case of the petitioner is that the order dated 29.10.1996 was passed by the Commissioner of Commercial Taxes and that no appeal lies to the Government against the order passed by the Commissioner of Commercial Taxes, which is final.

The facts narrated in the preceding paragraphs speak

for themselves. Even when the order was passed on 15.4.1997 in W.P. 6059 of 1997, granting liberty to the petitioner to prefer appeal against the order passed by the Commissioner, the petitioner did not bring it to the notice of the Court that no appeal lies to the Government against the order passed by the Commissioner. At any rate, we do not want to further dilate on the question as to the course adopted by the petitioner in filing successive writ petitions.

The only question that falls for our consideration is whether the petitioner is entitled for the benefit of any exemption in terms of the Government policy contained in G.O.Ms.No. 752 dated 4.7.1985?

It is clearly explained in the counter affidavit that G.O.Ms.No.752 dated 4.7.1985 sets out the circumstances under which exemption from payment of entertainment tax under Sub-Section (1) of Section 5 of the A.P. Entertainment Tax Act can be considered and granted by the Commissioner, which are as follows:

1. Natural calamities
2. Break in law and order
3. National calamities
4. Social customs
5. Cancellation of licence.

Admittedly, the petitioner theatre was closed during the period 12.7.1991 to 1.1.1992 due to the strike of its workers. The strike by the workers is not covered as one of the circumstances that could be taken into consideration for the purposes of granting exemption under the provisions of Section 19-A of the Act. The strike by the workers does not find place in the conditions stipulated in G.O.Ms.No. 752. It is, under these circumstances, we find it difficult to interfere with the proceedings of the Commissioner dated 29.10.1996 rejecting the request of the petitioner for grant of exemption.

The writ petition is totally misconceived. The writ petition

fails and shall accordingly stand dismissed without any order as to costs.

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B. Sudershan Reddy, J.

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S. Ananda Reddy, J.

Date: 19—09—2005.

MVB.